

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

RAYMOND PROCHASKA,)
)
Petitioner,)
)
-vs-) Case No. CIV-10-1090-F
)
HASKELL HIGGINS, WARDEN,)
JEHCC,)
)
Respondent.)

ORDER

On October 28, 2010, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation, wherein he recommended that the court: (1) deny petitioner's motion for leave to proceed *informa pauperis*; (2) order the payment of the \$5.00 filing fee within twenty days; and (3) dismiss this action without prejudice if petitioner fails to pay the \$5.00 filing fee or show good cause for the failure to do so.

On November 3, 2010, petitioner filed a response to the Report and Recommendation. In his response, petitioner states that the \$59.20 in his inmate trust account is mandatory savings and he cannot access the money without court order. Petitioner states that he has no objection to paying the \$5.00 filing fee, but he must have a court order in order to pay the filing fee from his mandatory savings. Petitioner requests the court to issue an order for the Oklahoma Department of Corrections to debit his account for payment of the \$5.00 filing fee.

Pursuant to 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with the recommendation of Magistrate Judge Bacharach. The court concludes that petitioner has sufficient funds in his

account to pay the \$5.00 filing fee. The court therefore accepts, adopts, and affirms the Report and Recommendation in its entirety.

According to petitioner, he cannot access the \$59.20 in his mandatory savings account to pay the \$5.00 filing fee without a court order. The court concludes that this order should be sufficient to allow petitioner access to the account to pay the \$5.00 filing fee. As noted by Magistrate Judge Bacharach in his Report and Recommendation:

Oklahoma law governing the statutory savings account expressly allows inmates to withdraw funds from the account to pay fees under 28 U.S.C. § 1911, *et seq.* Okla. Stat. tit. 57 § 549(A)(5); *see also, Williams v. Austin*, 890 P.2d 416, 418 (Okla. Ct. App. 1994) ('A prisoner's savings held by the Department of Corrections may be used to pay fees or costs in filing a civil action.') (citations omitted)).

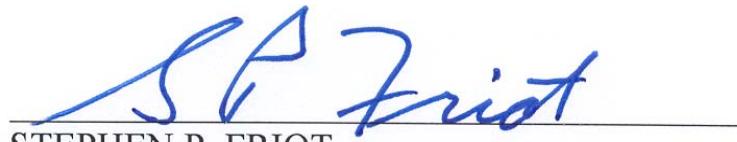
See, Report and Recommendation (doc. no. 9), p. 1, n. 1. Because petitioner's mandatory inmate savings account maintained by the Oklahoma Department of Corrections may be used to pay for fees in filing this action, the court concludes that petitioner can pay his \$5.00 filing fee from that account. Petitioner is responsible for paying the \$5.00 filing fee. However, the court shall direct the court clerk, in addition to sending a copy of this order to petitioner, to send a copy of this order, as well as Magistrate Judge Bacharach's Report and Recommendation, to the accounting officials at Hodgen-JEHCC, Hodgen, Oklahoma.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Robert E. Bacharach on October 28, 2010 (doc. no. 9) is **ACCEPTED, ADOPTED and AFFIRMED**. Petitioner's Application to Proceed in District Court Without Prepaying Fees or Costs, filed October 27, 2010 (doc. no. 7), is **DENIED**. Petitioner shall pay the \$5.00 filing fee within twenty days from the date of this order. If petitioner fails to pay the filing fee or show good cause for the failure

to do so within twenty days of the date of this order, the court shall, without further notice to petitioner, dismiss this action without prejudice.

The court directs the court clerk, in addition to sending a copy of this order to petitioner, to send a copy of this order and the Report and Recommendation to the accounting officials at Hodgen-JEHCC, Hodgen, Oklahoma.

DATED November 4, 2010.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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